

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

AMERICAN FEDERATION OF SCHOOL)	
ADMINISTRATORS LOCAL NO. 75,)	
)	
Petitioner,)	
)	
vs.)	Public Case No. 82-014
)	
ST. LOUIS COUNTY SPECIAL SCHOOL)	
DISTRICT,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the American Federation of School Administrators, Local No. 75, filing a petition for certification as public employee representative of certain employees of the St. Louis County Special School District. Hearings were held on September 28, 1982 and May 3, 1983 in St. Louis County, Missouri, at which representatives of the Petitioner and Respondent were present. The case was heard by State Board of Mediation Chairman Mary Gant, Employer Member William Hunker and Employee Member Joseph Cointin. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining unit determinations by Section 105.525, RSMo 1978.

At the hearings the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the Findings of Facts and Conclusions of Law.

FINDINGS OF FACT

The Respondent provides special education for handicapped children and vocational training for the residents of St. Louis County. It owns and operates 19 buildings and also provides teaching services in the 250 public school buildings

operated by other school districts throughout St. Louis County. Respondent employs approximately 3,200 people on its staff.

The proposed bargaining unit includes all of the administrative personnel of the Respondent, scattered throughout these myriad locations, with the exception only of the Superintendent, the Deputy Superintendent for Administration and the Deputy Superintendent of Instruction. There are approximately 130 employees in the proposed bargaining unit.

The positions in the proposed bargaining unit along with description of duties are as follows:

Assistant Superintendent - This classification contains the chief administrators of each of Respondent's five departments who report directly to the Deputy Superintendent. They supervise the administrative and program staff in their respective departments, and have authority to effectively recommend hiring, retention, promotion, transfer, discipline or discharge of the people in their respective department.

Director - Respondent employs eleven directors, scattered throughout four departments. They report to the Superintendent, Deputy Superintendents or Assistant Superintendents, and supervise Area Coordinators, Principal Coordinators and Program Coordinators. They participate in the hiring and retention of such personnel, investigate grievances and can effectively recommend discipline for such people.

RELATIONSHIP BETWEEN AREA COORDINATORS, PRINCIPALS, PRINCIPAL COORDINATORS, ASSISTANT PRINCIPALS AND PROGRAM COORDINATORS

Principals and Principal Coordinators are in charge of a building which is owned and operated by the Special School District. This is the major distinction between these positions and the position of Area Coordinator. In the buildings, Principals and Principal Coordinators have assistants. The Principal Coordinator's assistant holds the title of Program Coordinator. These positions are analogous and only the name of the positions are different. Area Coordinators do not have assistants.

The Principals and Assistant Principals have authority over teachers in their buildings; Principal Coordinators and Program Coordinators have authority over teachers in their assigned areas.

Area Coordinators, Principal Coordinators and Principals answer directly to an employee in the position of Director.

Principal - This job title is used only in the Vocational-Technical Department. Each Principal is the chief administrator in charge of the staff and program in a building owned and operated by the Respondent. They direct work assignments and assign staff in the building, assist in the hiring process and administer discipline to certificated and noncertificated personnel in the building. They are supervised by the Director of Instruction.

Principal Coordinators - Administrators in this classification are similar in responsibility to Principals, but within the two special education departments (the Early Childhood Special Education, Speech/Language Impaired, Hearing Impaired, Visually Impaired, Orthopedically Handicapped, Severely Handicapped and Career Education Department, and the Behaviorally Disordered, Hearing Disordered, Mentally Handicapped and Socially Handicapped Department). They are directly responsible for program and staff in their buildings and are supervised by Directors.

Area Coordinator - Area Coordinators supervise the teaching staff that provides Respondent's programs in school buildings operated by other school districts. They are the immediate supervisors of the teachers who provide those programs, interview and effectively recommend the hiring of such teachers, evaluate their performance and recommend retention or termination, have authority to grant or deny transfer requests, and can discipline such teachers from reprimand to recommended termination. They also supervise teacher aides and support personnel. The report to and are supervised by Directors.

Assistant Principal - Assistant Principals share responsibility with Principals for the programs and staffs in Vocational-Technical buildings. They assist in the process of hiring and supervising the teachers and programs in their buildings.

Program Coordinator - Program Coordinators are the functional equivalent of Assistant Principals but in special education departments. Their duties and authority are the same.

Other Coordinators - Petitioner is seeking to represent a variety of Data Processing, Administrative, and Transportation Coordinators located in various departments. Each of these people supervises other staff members and participates in adjustment of grievances.

Supervisor - Petitioner is also seeking to include in its proposed unit four Supervisors in the Vocational-Technical Department and eight Supervisors in the Support Services Department. The Supervisors in the Vocational-Technical Department direct both certified and noncertified staff, with authority to recommend rehiring and to terminate certain employees. The Supervisors in the Support Services Department are responsible for employees in other bargaining units and have authority to adjust grievances from people under their authority.

All of the proposed unit members supervise or are responsible for other District employees. They possess the authority to effectively recommend hiring, promotion, transfer, discipline or discharge of the employee they supervise and to assign work to them. In addition, each one exercises independent judgment and discretion in the performance of their duties.

CONCLUSIONS OF LAW

American Federation of School Administrators, Local No. 75 have petitioned to be certified as public employee representative for all administrative positions below the level of Associate Superintendent, including but not limited to the positions of Assistant Superintendent, Director, Principal, Principal Coordinator, Assistant Principal, Area

Coordinator, Program Coordinator and Supervisor. The school district objects to this unit contending the employees therein are teachers and outside the Board's jurisdiction and also that the employees are supervisors and not "employees" within the meaning of Section 105.510. These are the issues before the Board.

Respondent contends that the Board has no jurisdiction in this case because the employees in question are teachers and excluded from Board certification by Section 105.510, RSMo 1978. A teacher is an employee of a school district who, as his primary duty, provides instruction to students in a classroom setting, an employee who causes one to know a subject, who directs as an instructor. Hudson vs. Marshall, 549 SW2d 147, 153-154 (Mo. App. 1977). We have seen no evidence to suggest that any employees from the bargaining unit are employed primarily for that purpose. Therefore, we find that these employees are not teachers within our definition and this case is properly before us for unit determination.

As stated in Golden Valley Memorial Hospital vs. Missouri State Board of Mediation, 559 SW2d 581, 583 (Mo. App. 1977), it is the duty of the Board to identify employees whose duties involve acting directly or indirectly in the interest of the employer in relation to other employees and to exclude these employees from the bargaining unit. In applying the above test the Board has consistently excluded supervisors from Board certified bargaining units. Our position in regard to the inclusion of supervisors in Board certified bargaining units remains the same: one an employee is determined by this Board to be a supervisor he is not considered an "employee" within the meaning of Section 105.510, RSMo 1978, and therefore not entitled to inclusion in a Board certified unit.

When Section 105.510, RSMo 1978, became law in 1965 supervisors who initially could constitute a collective bargaining unit and have bargaining rights, had been without such rights under federal labor relations law for eighteen years. Congress in passing the Wagner Act (National Labor Relations Act) in 1935, 49 Stat. 449, gave

supervisors both the right to constitute a bargaining unit and the right to bargain collectively with their employer. Experience under the Wagner Act proved that this was a mistake. Therefore, when the Wagner Act was amended by the Taft-Hartley Act in 1947 these rights were removed from the federal law and confirmed by the United States Supreme Court in Hanna Mining Company v. District, 2 Marine Engineers Beneficial Association, AFL-CIO, 1965, 86S. CT 327, 282 U.S. 181, 15 L. Ed. 2d 254.

In that case decided in 1965 the United States Supreme Court stated:

"When in 1947 the National Labor Relations Act was amended to exclude supervisory workers from the critical definition of "employees, Sec. 2 (3), it followed that many provisions of the Act employing that pivotal term would cease to operate where supervisors were the focus of concern. Most obviously, Sec. 7 no longer bestows upon supervisory employees the rights to engage in self-organization, collective bargaining, and other concerted activities xxx." Hanna Mining, Supra 1.c. 259.

Regarding the intent of Congress in excluding supervisors from collective bargaining under both federal and state law the United States Supreme Court further wrote:

"This broad argument fails utterly in light of the legislative history, for the Committee reports reveal that Congress' propelling intention was to relieve employers from any compulsion under the Act and under state law to countenance or bargain with any union of supervisory employees." Hanna Mining, Supra 1.c. 259.

Reason and years of experience make it clear that the word "employee" in labor-management law excludes supervisors.

The Board has consistently looked to a number of factors in determining whether employees are supervisors. Western Missouri Public Employees, Local 1812 vs. Jackson County, Department of Corrections, Public Case No. 90 (SBM 1977). The factors applicable here are: (1) authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees; (2) authority to direct and assign the

work force; (3) the amount of independent judgment and discretion in the supervision of employees.

Assistant Superintendents and Directors are clearly supervisors within our definition. Both positions are clearly granted great discretion in the exercise of their considerable authority to direct and assign the numerous administrators and other staff responsible to them. The facts also demonstrate that these two positions enjoy the authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees responsible to them. Assistant Superintendents and Directors are clearly supervisors under our test.

Principals, Principal Coordinators, Area Coordinators, Assistant Principals and Program Coordinators while possessing less authority than Assistant Superintendents and Directors are also clearly supervisors under our test. In addition to supervising teachers, these five positions are responsible for supervision of various support personnel. All five of these positions are granted independent judgment in directing and assigning the work force beneath them. They are also important in evaluation, discipline, and hiring of employees.

The remaining "Coordinators" and "Supervisors" concerning whom this Board was provided testimony, are all similar to the Administrators already discussed in their supervisors grant of authority from the School District.

This Board is reluctant to deny an employee's right to representation because of supervisory status unless it is clear from the record that the employee is a supervisor under our test. The named positions in this proposed unit are clearly supervisory and their inclusion in a Board certified bargaining unit is clearly inappropriate.

Evidence offered does not support a finding of one or more smaller bargaining units. In order to find a smaller unit appropriate, the testimony and exhibits should show a group of employees who constitute a distinct, homogenous and functionally coherent unit.

Since Missouri law specifically excludes teachers from collective bargaining rights, we do not foresee sound and effective employee relations between the school board and the teachers if their supervisors are allowed to participate in collective bargaining as a labor organization.

DECISION

It is the decision of the State Board of Mediation that the proposed bargaining unit is inappropriate and, therefore, the petition is dismissed.

Signed this 25th day of August, 1983.

STATE BOARD OF MEDIATION

(S E A L)

/s/ Mary L. Gant
Mary L. Gant, Chairman

/s/ William Hunker
William Hunker, Employer Member

/s/ Joseph Cointin
Joseph Cointin, Employee Member